

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-275-S

IN RE: Application of Condor Environmental,)	
Incorporated Requesting an Expansion of Its)	ORS STATUS REPORT AND
Existing Sewer Service Areas to Include)	RECOMMENDATIONS
Certain Portions of Anderson County and)	
Saluda County, and Approval of Agreements)	
(Request for Expedited Review))	

In Order No. 2020-792, the Public Service Commission of South Carolina (“Commission”) asked the South Carolina Office of Regulatory Staff (“ORS”) to provide the results of its discovery and/or review of Condor Environmental, Inc. (“Condor” or the “Company”) and its Application Requesting an Expansion of Its Existing Sewer Service Area to Include Certain Portions of Anderson County and Saluda County and Approval of Agreements and Motion to Allow Service on a Provisional Basis to the Commission within ten (10) days from the Order, or if not ready or available, for the ORS to provide a status report. ORS provided an initial Status Report to the Commission on December 15, 2020.¹

Subsequent to the ORS initial Status Report, Condor filed an Amended Application Requesting an Expansion of Its Existing Sewer Service Area to Include Certain Portions of Anderson County and Approval of Agreement (“Application #4”) on January 12, 2021. Upon review of the information obtained in discovery and Application #4, ORS issued its Second and Continuing Request for Books, Records, and Other Information (“AIR 2”) on February 4, 2021. The Company provided responses to AIR 2 on February 16, 2021. In Order No. 2021-92, the Commission directed ORS to provide the Commission with a written status report on ORS efforts to resolve the issues in the case. ORS therefore offers this Status Report in response to Order No. 2021-92.

ORS Review of Application #4

In Application #4, Condor proposes to charge customers in the Carriage Hill Subdivision (“Carriage Hill”) the same rates and charges approved by the Commission for sewer collection service in Order No. 2016-74, Docket No. 2015-24-S. Specifically, Condor proposes to charge customers a Monthly Fee which totals \$37.52 per home per month. The Monthly Fee is comprised of the cost for Condor to perform operation and maintenance (“Condor Fee”) of \$12.00 per home per month and the wastewater treatment fee (“WW Fee”) of \$25.52 per home per month to be “passed through” to Easley Combined Utilities (“ECU”) for treatment of the wastewater. Condor

¹ <https://dms.psc.sc.gov/Attachments/Matter/bf4c3860-4459-479b-8603-70f0c629832e>

stated it is currently billing the Caledonia Subdivision (“Caledonia”) located in Anderson County in a similar manner.

ORS reviewed Application #4 to verify the proposed rates and charges, .ORS’s review of the rate structure approved for customers in Caledonia via Order No. 2016-74 indicates that the Commission granted Condor the ability to adjust the Monthly Fee to adjust for the future rate changes by ECU for treatment of wastewater without a rate case as a “pass-through” with the following conditions:

First, Condor shall furnish this Commission and ORS with satisfactory proof of the basis for the adjustment and the billing method to be utilized prior to the proposed effective date. The Company shall also furnish written notice to the Company’s customers affected by the adjustment thirty days prior to the proposed implementation of the new adjustment and advise them of the basis for the billing adjustment and its effective date.² {emphasis added}

At the time of filing the original application in this immediate docket (“Application #3”), records provided to ORS by Condor indicated that Condor was charging Caledonia a Condor Fee of \$12.50 per home per month and a WW Fee of \$25.52.³ However, as of November 14, 2020 when Application #3 was filed, notice had not been provided to the Commission or ORS for any increase to the approved WW Fee for Caledonia of \$23.00 per home per month as required by Order No. 2016-74, nor had the Commission approved an increase of \$0.50 per home per month to the approved Condor Fee of \$12.00 per home per month.⁴ It appears that after Condor filed Application #3, the Company has reverted to charging Caledonia a \$12.00 per home per month Condor Fee and provided the customers the notification from ECU to support an increase to \$25.52 per home per month for the WW Fee. Based on the Company’s correction and notices supporting the WW Fee, ORS determined the proposed WW Fee of \$25.52 per home per month for Carriage Hill are correct.

ORS’s review of customer’s billing information provided by Condor in response to AIR 2 indicates that, since Commission approval was obtained in Order No. 2016-74, Condor did not furnish to the Commission and ORS the satisfactory proof of the basis for the adjustment and billing method for the three (3) increases of the WW Fee designed to pass-through subsequent ECU rate increases to Caledonia as required in Order No. 2016-74.

However, on December 15, 2020 Condor furnished to the Commission and ORS a notification from ECU to Condor dated February 12, 2020 and a notification from Condor to Carriage Hill, Rose Hill, and Caledonia dated February 12, 2020 which notes the increase of the WW Fee to \$25.52 per home per month.⁵ Condor implemented the increase in the WW Fee on Caledonia customer bills rendered in May 2020. Condor did not comply, in a timely manner, with Commission Order No. 2016-74. Based on the information provided by Condor to the Commission

² Order No. 2016-74, Page 2

³ Invoice #4749

⁴ Application Nos. 1&2 were filed in Docket No. 2020-192-S.

⁵ These notifications were filed as an enclosure to its Letter to The Honorable Jocelyn G. Boyd on December 15, 2020 in this instant proceeding

on December 15, 2020 regarding the increase in the WW Fee, ORS verified the current Monthly Fee of \$37.52. (\$12.00 Condor Fee plus \$35.52 WW Fee = \$37.52 per home per month).

ORS recommends Condor fully and timely comply with Order No. 2016-74 and furnish the Commission and ORS with satisfactory proof of the basis for the adjustment and the billing method to be utilized for any future pass-through increase **prior to the proposed effective date**. The Company shall also furnish written notice to the Company's customers affected by the adjustment 30 days **prior to the proposed implementation of the new adjustment and advise them of the basis for the billing adjustment and its effective date**.⁶ {emphasis added}

Additionally, ORS's review of the Application #4 identified a term and condition within the Amendment to Gravity Sewer Agreement ("Amendment") filed within Exhibit A of Application #4 that may limit customer participation in future rate cases and cause customer confusion. The condition, on Page 2 of the Amendment, reads as follows:

*The Developer and, after transfer of responsibilities, the Association, also agree that, Condor may apply to the S.C. Public Service Commission ("PSC") for an increase in the Condor Fee to an amount up to Fourteen and 98/100 Dollars (\$ 14.98) per month, per home ("Initial Increase"), and **the Developer and/or the Association shall provide Condor a letter indicating no objection to the requested increase**.* {emphasis added}

Homeowners and customers in Carriage Hills should not be required to waive their rights to participate in future rate proceedings. ORS questioned Condor on this provision and Condor stated "the agreement does not prevent a Carriage Hills homeowner from participating in a future rate case."⁷ If the Commission were to approve Condor's Application #4, the provision to limit customer participation in a future rate proceeding should be eliminated.

ORS Review in Accordance with Order No. 2020-792

1) ORS Billing Statement Review

ORS is performing a comprehensive review of Condor's compliance with Commission rules, regulations, and orders. During the review, ORS identified several discrepancies between the rates billed to customers and Condor's Commission-approved rates. At the time of ORS's Status Report filed on December 15, 2020 in response to Order No. 2020-792, ORS's Billing Statement Review was ongoing. The below information represents the current status of ORS's Billing Statement Review.

S.C. Regulation 103-503(A) and (B) state that:

(A) *No schedule of rates, contracts, or rules and regulations shall be changed until after the proposed change has been approved by the commission.*

⁶ Order No. 2016-74, Page 2

⁷ Response to ORS's First and Continuing Request for Books, Records, and Other Information, Question 2 ("AIR 1-2")

- (B) *All rates, contract forms, and rules and regulations, proposed to be put into effect by any utility as defined in 103-502(11) shall be first approved by this commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.*

ORS identified four (4) subdivisions where Condor billing records indicate that rates were changed by Condor without having first been approved by the Commission: Rose Hill, Caledonia, Country Place, and Fairview Chase.

Rose Hill

Commission Order No. 2012-659 in Docket No. 2012-101-S approved Condor's provision of service to Rose Hill pursuant to the terms, conditions, rates, and charges of the agreements between the Condor, ECU, Poinsett Development, LLC, and Rose Hill Upstate Homeowner's Association, Inc. ("Rose Hill Agreements"). This included a rate of \$30.00 per home per month for Rose Hill ("Rose Hill Monthly Fee"), which consisted of a \$10.00 fee per home per month operation and maintenance fee ("Rose Hill Condor Fee") and the wastewater treatment fee of \$20.00 per home per month collected by Condor and paid to ECU without markup ("Rose Hill WW Fee").

The Rose Hill Agreements contained conditions which stated:

Upon no less than ninety (90) days prior notice to Poinsett or the Association, Condor shall have the right to increase the amount of the [Rose Hill] Condor Fee at any time, in order to compensate Condor for any reasonable increase in the cost and expense to Condor of performing its responsibilities under this Agreement;⁸

and

Additionally Condor may increase the [Rose Hill] WW Fee, without markup, and the [Rose Hill] Monthly Fee by the corresponding amount, whenever such fee is raised by ECU[.]⁹

However, a subsequent condition in the Rose Hill Agreements stated that:

*If Public Service Commission (PSC) jurisdiction is specifically applied to the gravity sewer in this subdivision, then **no increase in the [Rose Hill] Monthly Fee shall be implemented unless first approved by the PSC.**¹⁰ {emphasis added}*

In response to AIR 2, Condor provided billing summaries for Rose Hill in the form of Microsoft Excel spreadsheets which identified invoice numbers and dates, and the corresponding Condor Fee, WW Fee, total Monthly Fee for the subdivision, and number of homes served in the respective billing period beginning with invoices dated December 2015. ORS has not had the

⁸ Docket No 2012-101-S, Application Exhibit C, Page 3

⁹ Docket No 2012-101-S, Application Exhibit C, Page 4

¹⁰ Docket No 2012-101-S, Application Exhibit C, Page 4

opportunity to audit the billing summaries against actual invoices, notices to customers, or notices from ECU. ORS will seek this information from Condor in a subsequent data request to verify the billing information provided by the Company.

ORS's review of Condor's billing summaries indicates Condor has not complied with Commission Order No. 2012-659, the Rose Hill Agreements, and S.C. Regulation 103-503. Specifically, ORS determined that Condor increased the Rose Hill Condor Fee (and thus the Rose Hill Monthly Fee) without Commission approval in May 2020 from \$10.00 per home per month to \$12.50 per home per month. In November 2020 Condor decreased the Rose Hill Condor Fee from \$12.50 per home per month to \$12.00 per home per month.¹¹ Additionally, ORS determined Condor increased the Rose Hill WW Fee (and thus the Rose Hill Monthly Fee) on at least four (4) separate occasions without Commission approval. The Company's records indicate that:

- 1) In December 2015, the Rose Hill WW Fee charged by Condor to customers was billed at \$23.00 per home per month.¹²
- 2) In April 2016, Condor increased the Rose Hill WW Fee from \$23.00 per home per month to \$24.05 per home per month.
- 3) In April 2018, Condor increased the Rose Hill WW Fee from \$24.05 per home per month to \$25.02.
- 4) In March 2020, Condor increased the Rose Hill WW Fee from \$25.02 to \$25.52.¹³

Table 1: Rates Charged to Rose Hill per Condor Billing Summary

Ordered Rates vs Invoice	Rose Hill Condor Fee	Rose Hill WW Fee	Rose Hill Monthly Fee
Order No. 2012-659	\$10.00	\$20.00	\$30.00
December 2015	\$10.00	\$23.00	\$33.00
April 2016	\$10.00	\$24.05	\$34.05
April 2018	\$10.00	\$25.02	\$35.02
March 2020	\$10.00	\$25.52	\$35.52
May 2020	\$12.50	\$25.52	\$38.02
November 2020	\$12.00	\$25.52	\$37.52

¹¹ Responses to AIR 2; Note: the monthly billing data provided by the Company has not yet been audited against actual invoices

¹² The Company stated that it does not have billing records predating December 30, 2015 in its response to AIR 2-6, which amounts to slightly more than five (5) years of billing records; S.C. Regulation 103-511, through the 2007 Edition of *Regulations to Govern the Preservation of Records for Electric, Gas and Water Utilities*, Item 52 *Customer ledgers and other records used in lieu of*, requires that such billing records be retained for at least six (6) years.

¹³ Responses to AIR 2; Note: the monthly billing data provided by the Company has not yet been audited against actual invoices or notifications from ECU

Caledonia

Commission Order No. 2016-74 in Docket No. 2015-24-S approved Condor to provide service to Caledonia and approved the Gravity Sewer Agreement between Condor, Caledonia of the Upstate LLC, Caledonia Homeowners Association, Inc., and ECU (“Caledonia Agreement”). This included a rate of \$35.00 per home per month for Caledonia (“Caledonia Monthly Fee”), which consisted of Condor’s \$12.00 per home per month operation and maintenance fee (“Caledonia Condor Fee”) and the wastewater treatment fee of \$23.00 per home per month collected by Condor and paid to ECU without markup (“Caledonia WW Fee”). Order No. 2016-74 approved Condor to implement any future rate adjustments from ECU without a rate case via a pass-through, with several conditions.

Additionally, Condor’s application in Docket No. 2015-24-S explicitly stated that:

Any billing adjustment associated with increases by Easley Combined Utilities shall not be billed until the following conditions are met:

- (a) Applicant shall furnish the Public Service Commission of South Carolina satisfactory proof of the basis for the adjustment and the billing method to be utilized prior to its proposed effective date.*
- (b) Applicant shall furnish written notice to the customers affected by the Purchased Water Adjustment advising them of the basis for the billing adjustment and its effective date.¹⁴*

The Caledonia Agreement also contained a condition that stated:

*Upon no less than ninety (90) days prior notice to Caledonia or the Association, Condor shall have the right to increase the amount of the [Caledonia] Condor Fee at any time, in order to compensate Condor for any reasonable increase in the cost and expense to Condor of performing its responsibilities under this Agreement, **provided that such increase shall be approved by the South Carolina Public Service Commission**[...] ¹⁵ {emphasis added}*

In response to AIR 2, Condor provided billing summaries for Caledonia in the form of Microsoft Excel spreadsheets which identified invoice numbers and dates, and the corresponding Condor Fee, WW Fee, total Monthly Fee for the subdivision, and number of homes served in the respective billing period with invoices dated December 2015. As of the date of this Status Report, ORS has not had the opportunity to audit the billing summaries against actual monthly bills rendered to customers, notices to customers, or notices from ECU.

ORS’s review of Condor’s billing summaries indicates Condor has not complied with Commission Order No. 2016-74, the Caledonia Agreement, and S.C. Regulation 103-503. Specifically, ORS determined that Condor increased the Condor Fee without Commission

¹⁴ Docket No 2015-24-S, Application, Page 6

¹⁵ Docket No 2015-24-S, Application Exhibit A, Page 3

approval in May 2020 from \$12.00 per home per month to \$12.50 per home per month. In November 2020, ORS determined Condor decreased the Caledonia Condor Fee from \$12.50 per home per month to \$12.00 per home per month.¹⁶ Additionally, ORS determined that the Company records indicate that Condor increased the Caledonia WW Fee on three (3) separate occasions without notice to ORS or the Commission:

- 1) In April 2016, Condor increased the Caledonia WW Fee from \$23.00 per home per month to \$24.05 per home per month.
- 2) In April 2018, Condor increased the Caledonia WW Fee from \$24.05 per home per month to \$25.02 per home per month.
- 3) In May 2020, Condor increased the Caledonia WW Fee from \$25.02 per home per month to \$25.52 per home per month.¹⁷

Table 2: Rates Charged to Caledonia per Condor Billing Summary

Ordered Rates vs Invoices	Caledonia Condor Fee	Caledonia WW Fee	Caledonia Monthly Fee
Order No. 2016-74	\$12.00	\$23.00	\$35.00
April 2016	\$12.00	\$24.05	\$36.05
April 2018	\$12.00	\$25.02	\$37.02
March 2020	\$12.00	\$25.52	\$37.52
May 2020	\$12.50	\$25.52	\$38.02
November 2020	\$12.00	\$25.52	\$37.52

Country Place and Fairview Chase

Commission Order No. 2012-824 in Docket No. 2012-315-S approved Condor to provide service to the Country Place and Fairview Chase subdivisions, among others. The Commission approved annual rate for Country Place is \$5,070 per year (equal to \$422.50 per month) for the entire subdivision.¹⁸ The October 2020 billing statement provided by Condor to ORS indicates a rate of \$300 per month (equal to \$3,600 per year) to Country Place.¹⁹

The Commission approved a monthly rate for Fairview Chase of \$825 per month for the entire subdivision.²⁰ The October 2020 billing statement provided by Condor to ORS indicates a rate of \$300 per month for Fairview Chase.²¹

¹⁶ Responses to AIR 2; Note: the invoice data provided by the Company has not yet been audited against actual invoices

¹⁷ Responses to AIR 2; Note: the invoice data provided by the Company has not yet been audited with the actual invoices or notifications from ECU

¹⁸ Docket No. 2012-315-S, Application Exhibit O

¹⁹ Invoice #4752

²⁰ Docket No. 2012-315-S, Application Exhibit O

²¹ Invoice #4753

For both the Country Place and Fairview Chase subdivisions, Condor stated that it sought to alleviate the burden on the homeowners by reducing the subdivision rate.²² This was due to the fact that the subdivisions do not contain as many homes as originally expected.²³ To date, ORS determined that neither adjustment to the reduce the rates charged by Condor to customers in Country Place and Fairview Chase has been approved by the Commission.

2019 Wastewater Utility Annual Report

ORS reviewed Condor's 2019 Wastewater Annual Report ("2019 Report") and requested clarification from the Company on the financial information contained in the 2019 Report in AIR 1.. In lieu of providing responses to ORS questions, Condor provided a Revised 2019 Wastewater Utility Annual Report ("2019 Revised Report") to ORS on February 2, 2021. ORS has not concluded its review of the Company's 2019 Revised Report and ORS will continue to work directly with the Company to resolve any issues identified in the 2019 Revised Report.

ORS Recommendations

The information received to date from Condor related to the ORS Billing Statement Review indicates that Condor did not comply with Commission rules, regulations, and Orders. However, given the complexities and on-going nature of the Billing Statement review, ORS has not determined conclusively that customers are due refunds from Condor. Additional information from Condor will be required for ORS to make a determination regarding refunds. If ORS determines that customers should receive a refund from Condor, ORS will file the appropriate petition seeking such refunds in accordance with S.C. Regulation 103-533.

The accuracy of Condor's Wastewater Utility Annual Reports is critical to any review of the Company's financial records in a rate proceeding. Based on the type of revisions made by Condor to the 2019 Revised Report, ORS recommends that the Company review its Wastewater Utility Annual Reports for 2017, 2018, and 2019 and, if necessary, file revised Wastewater Utility Annual Reports for 2017, 2018, and 2019 with the Commission and ORS prior to filing an application for any future general rate proceeding. ORS will continue to work cooperatively with Condor to resolve issues related to financial reporting.

ORS recommends the approval of Application #4 for Carriage Hills contain the following conditions to protect the public interest:

1. The Association shall not be required to provide a letter to Condor indicating no objection to a future rate increase (i.e., the Initial Increase). Condor shall file an executed amendment to the Agreement which removes this requirement within 30 days of the Commission Order.

²² Responses to AIR 1-23 and 1-24

²³ Condor response to Questions 3 and 4 of ORS Billing Statement Review Letter dated November 23, 2020

2. Condor shall cooperate fully during rate adjustment audits and compliance audits conducted by ORS.²⁴
3. Condor shall ensure that the rates being charged to customers are approved by the Commission prior to implementation.
4. Condor shall provide notice to the Commission and ORS and, when required, receive approval from the Commission prior to the adjustment of any rate or charge for any customer.
5. Condor shall review its Wastewater Utility Annual Reports for 2017, 2018, and 2019 and, if necessary, file revised Wastewater Utility Annual Reports for 2017, 2018, and 2019 with the Commission and ORS prior to filing an application for any future general rate proceeding.
6. Condor shall file a general rate case for all service areas within 24 months of the Commission Order on Application #4.
7. The application for a general rate proceeding shall include the rate design proposed by Condor to include, but is not limited to, an analysis of the applicability of a statewide single-tariff rate for all customers.
8. The application for a general rate proceeding shall include a schedule of non-recurring charges, terms and conditions related to service, customer billing, toxic and pretreatment effluent guidelines, construction standards, extension of utility services lines and mains, definitions and other term, condition, policy or practice of rendering sewer service (i.e., tampering charges, limitation of liability).
9. Condor shall file as part of the application for a general rate proceeding details of its compliance with Commission Order No. 2018-308 related to the 2017 Tax Cuts and Jobs Act ("TCJA").
10. The TCJA made certain changes to federal tax law that have an impact on developers making infrastructure investments in the form of Contributions in Aid of Construction ("CIAC"). CIAC represents the amount of money or property advanced or contributed by a developer to ensure that the expansion of water or wastewater service to new customers or new locations does not unfairly burden a utility's existing customers. As a result of the TCJA, CIAC is now considered federal taxable income to water and wastewater utilities. Condor shall file as part of the application for a general rate proceeding the Company's policy and accounting method for the gross-up of developer contributed assets, whether in kind or cash in accordance with Commission Order No. 88-237.
11. Within 30 days of filing its application for its next general rate proceeding, Condor shall provide satisfactory proof to the Commission and ORS that each household or

²⁴ S.C. Regulation 103.517

commercial unit in each of its service areas have been notified, in writing, that Condor has filed a base rate application with the Commission. The notification shall include, at a minimum, how individuals may participate in the proceeding, the existing rate schedules, and the proposed rate schedules.

12. Condor shall maintain its books and records in accordance with the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts ("USOA").

13. Condor shall retain its records in accordance with S.C. Regulation 103-511.

The Commission should also include any other conditions it deems necessary to protect the public interest.

s/ Alexander W. Knowles

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March 8, 2021

Columbia, South Carolina